

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAROL LEWIS,

Plaintiff,

v.

Case 1:15-cv-13530-NMG

ALEX AZAR,
Secretary of the U.S. Department of Health
and Social Services,

Defendant.

**PLAINTIFF'S MOTION FOR LEAVE TO SUBMIT
NOTICE OF SUBSEQUENT AUTHORITY
GRANTED JUNE 19, 2018**

Plaintiff Carol Lewis respectfully filed this Motion for Leave to Submit Notice of Subsequent Authority on June 18, 2018 which was granted by the Court on June 19, 2018, to bring to the Court's attention a decision issued on June 12, 2018 in *Whitcomb v. Azar*, Case No. 17-cv-14, (June 12, 2018) (ED Wisc., Jones, J.). Exhibit A. There, the Court addressed the same issues pending before this Court in Ms. Lewis' Motion for Fees. *See* Dkt. # 80. The *Whitcomb* decision held:

The Secretary's position is not substantially justified, as there is no reasonable basis for arguing that continuous glucose monitors are not primarily and customarily used to serve a medical purpose.

Whitcomb at 4. In addition, the Court rejected the Secretary's claim of "consistency" as evidence of substantial justification holding:

In fact, this "foolish consistency" – which the Secretary continues to propound despite this and other court's adverse decisions – demonstrates the unreasonableness of the Secretary's position.

Id. at 5-6 (internal citations omitted). Finally, the Court held that a “special factor” was present so that fees were awarded using the Parrish firm’s usual and customary billing rates. *Id.* at 6-8. In doing so, *inter alia*, the court noted the Parrish firm’s specialized access to ALJ decisions related to CGMs. *Id.* at 7-8.

Thus, the *Whitcomb* court addressed, and rejected, the same defenses the Secretary offers here to an EAJA award and specifically contradicted the Secretary’s claims regarding the holdings of the Wisconsin court.

Dated: June 19, 2018

Respectfully submitted,

CAROL LEWIS, By her attorneys,
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Certificate of Service

I certify that the foregoing will be filed through the electronic filing system of the Court, which system will serve counsel for Defendant electronically, on this the 19th day of June 2018.

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